IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 105 of 2007

State of Uttaranchal. ……..Appellant.

Versus

Liyakat. ....…. Respondent.

Present:
Mr. A.K. Sah, AGA for the State of Uttarakhand / appellant.
Mr. C.K. Sharma, Amicus Curiae for the respondent.

Hon'ble Alok Singh, J

1. Present appeal is directed against judgment and order dated 22.01.2007 passed by Additional Sessions Judge, Haridwar in Sessions Trial Nos. 193 & 194 of 2003 whereby respondent was acquitted of the charge levelled against him under Section 307, 379/34, 411/34 IPC; under Section 26 of the Forest Conservation Act; under Section 27 and 29 read with Section 51 of the Wildlife Protection Act and under Section 25 of the Arms Act.

2. Brief facts of the present case *inter alia* are that PW 1 Kunwar Singh Dholia lodged an FIR to the effect that on 25.09.2001, PW1 Kunwar Singh Dholia, Surat Singh, Nand Kishore Shukla, Satpal Singh, Shiv Dayal Singh, on receiving the secret information from informer, went on patrolling in Rajaji National Park; at about 10.00 p.m. in the night, they heard sound of cycle and rattling of bushes, they flashed the torch light and saw Harun and Liyakat were taking teak wood on their cycle; seeing officials of forest, they fled from the spot; Liyakat opened fire on the officials of forest; forest officials chased them; forest officials recovered cycle and country made pistol left by Harun and Liyakat. Police lodged the FIR and investigation was conducted by Sub Inspector Ved Pal Singh. He filed chargesheet against Liyakat.

3. Mr. A.K. Sah, AGA for the State of Uttarakhand submits that learned trial court failed to consider this fact that Liyakat was identified by the forest officials in the light of torch and all the forest official prosecution witnesses have stated that they saw Liyakat in torch light.

4. From the perusal of record, it transpires that torch was not produce on record. It has not come on record, who was carrying the torch. Even, learned trial court examining every aspect of the matter very meticulously came to the conclusion that even if torch was there, it was highly improbable to identify the accused because the moment torch light fell on the accused he would naturally cover his face by hand; and as per statements of prosecution witness, handle of cycle was in the hand of Harun and Liyakat was pushing the cycle carrying teak wood log, so in these circumstance, naturally, first light must be fallen on Harun then on Liyakat and Liyakat must be bent to some angle as he was pushing the cycle, therefore, it would be highly improbable for the forest officials to identify Liyakat only.

5. It has come on record that Liyakat was not arrested from the spot. He was not arrested from his house. Country made pistol so recovered from the way was not in a running condition. Rope, which was used to tie the teak wood log, was not produced on record.

6. Learned trial court considering all the facts and circumstances of the case and going through the material available on record was pleased to acquit the respondent.

7. I am conscious about the fact that in an appeal or revision against the judgment of acquittal, appellate or revisional court should not lightly interfere with the reasoning and findings

recorded by the trial court, even if two views are possible. The Superior Court may interfere with the judgment of acquittal, only when the Superior Court comes to a definite conclusion that judgment of acquittal is shocking in the facts and circumstances of the case, or the Superior Court finds that trial court fails to appreciate the evidence in right perspective or if judgment impugned is found to be totally perverse or if the Superior Court comes to a conclusion that trial court denied fair opportunity to adduce evidence on the ground uncalled for.

8. In view of the above discussion, no interference is called for. Accordingly, government appeal fails and is hereby dismissed without costs.

9. Registry is directed to supply a copy of this judgment to the court below for information along with lower court record.

(Alok Singh, J.)
01.05.2019

SKS